

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6590 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- Nos. 1 to 5 No

MOHAMMED SADIQ SADRUMIYA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner
MR ND GOHIL ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/03/99

ORAL JUDGEMENT

Grievance of the petitioner in this writ petition under Article 226 of the Constitution is that he has been illegally detained in pursuance of order dated 13.7.1998 passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA'). He has prayed that the aforesaid

order be quashed and he may be released from illegal detention.

From the grounds of detention it appears that from four registered offences under the Bombay Prohibition Act as well as from the statements of two confidential witnesses the Detaining Authority was subjectively satisfied that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed against the petitioner.

The impugned order has been challenged by the learned Counsel for the petitioner only on one ground that the activities of the petitioner were not prejudicial for maintenance of public order. It therefore implies that the subjective satisfaction of the Detaining Authority that the petitioner is bootlegger has not been challenged. Even specifically in the course of arguments this declaration was not challenged nor it could be challenged in view of registration of four offences under Bombay Prohibition Act and statements of two confidential witnesses. The petitioner was therefore rightly declared to be bootlegger. A bootlegger however, can be preventively detained only when his activities are found prejudicial for maintenance of public order. The material before the Detaining Authority for his subjective satisfaction on this ground was registration of four offences against the petitioner under Bombay Prohibition Act. From the grounds of detention it is not disclosed that the petitioner at the time of search and seizure obstructed the process of law or created situation prejudicial for maintenance of public order. If he committed offences punishable under Bombay Prohibition Act, he was sufficiently booked under the relevant provisions of the Act and the situation which arose on those four occasions was tactfully dealt with by the police authorities. Consequently, these registered offences could not be pressed in service for holding that the activities of the petitioner on those four occasions were prejudicial for maintenance of public order.

Now remains the consideration of statements of two confidential witnesses.

The first witness stated about incident dated 15.6.1998 which took place at 4.00 p.m. When the witness was passing through the road the petitioner and his associates approached the witness and stopped him on the suspicion that the witness was police informer. The witness was beaten. He shouted for help, whereupon

people gathered from the thickly populated area like Khanpur. Upon this the petitioner became furious and took out knife from his pocket and rushed towards people who gathered there. Thereupon the people started running here and there. Atmosphere of terror was created. Business was closed. Daily routine of the people was disturbed. On careful examination of this statement it can hardly be said that any member of the public was beaten or the commotion created during the incident was such which could have lasted even for shortwhile. If such commotion took place people were bound to run for safety and if in this process some shops were closed it cannot be said that the situation prejudicial for maintenance of public order was created. By this incident members of public or section thereof in the locality were hardly affected. If it was a case in which the witness was beaten by the petitioner and his companion it could not be said that the potential effect of such incident was to disturb the public order in the locality. As such the statement of this witness could not be used for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

So far as the second witness is concerned, he disclosed about incident dated 25.6.1998 which occurred at 7.00 p.m. The witness was present at his house. The petitioner and his companions with stock of liquor went to the house of the witness and asked him to store the said liquor in his house. The witness refused to store it. The petitioner became angry and he threatened the witness and he caught hold of him and brought him out in public near dargah of Abdul Vahab. The witness started shouting, hence, people gathered. The petitioner became more furious and attacked the people. Hence people started to run here and there. There was some suspicion as to in what manner the petitioner attacked the people who collected at the spot and to remove this suspicion English translation of the statement of this witness before the sponsoring authority was obtained. From this statement, it disclosed that the petitioner having a knife in his hand rushed towards crowd to assault and therefore people ran helter skelter. It therefore flows that actually the members of the public who collected at the spot were neither attacked nor beaten, rather, the petitioner ran towards the crowd to assault members of the crowd. If this is the correct statement of the witness then the Detaining Authority without applying its mind to the entire statement of this witness, furnished in the grounds of detention, incorrect gist of statement of this witness indicating that the petitioner attacked crowd

which is actually found to be incorrect. If the crowd was not attacked either by the petitioner or by his companions it can safely be said that the members of the crowd were hardly injured or assaulted by the petitioner. If on account of fear they ran for safety it cannot be said that the incident was so alarming as to create sense of panic, danger or alarm in the minds of the people or a section thereof.

Sofar as beating of the witness is concerned, if he was beaten near dargah of Abdul Vahab it cannot be said that public order was disturbed. It is not the statement of the witness that bootlegging activity was being carried out near dargah. Even if this would have been the statement of the witness it could not ipso facto be deemed to be the activity prejudicial for maintenance of public order.

In Special Civil Application No.2348 of 1998 decided on 17.11.1998, Special Civil Application No. 7586 of 1998 decided on 24.12.1998, Special Civil Application No.7989 of 1998 and Special Civil Application No. 9932 of 1998 decided by this Court today, similar situation was considered where activities were confined to a place near temple, mosque and religious place of jain community and it has been held that such activity per se does not amount to creating situation prejudicial for maintenance of public order.

The statement of the second witness also could not be pressed in service for holding that the activities of the petitioner were prejudicial for maintenance of public order.

No other point was pressed.

Since the activities of the petitioner were not prejudicial for maintenance of public order his detention under PASA has been rendered illegal. The writ petition is therefore succeeds and is hereby allowed. The detention order dated 13.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt